



Practitioner's Docket No. 2002-IP-009291U1

PATENT

IFW/BA

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Lyle V. Lehman, et al.

Application No.: 10/650,186 Group No.: 3672

Filed: 8/28/03

Examiner:

For: VIBRATING SYSTEM AND METHOD FOR USE IN SAND CONTROL AND FORMATION STIMULATION IN OIL AND GAS RECOVERY OPERATION

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION  
FOR PATENT ABANDONED UNINTENTIONALLY UNDER  
37 C.F.R. § 1.137(b)**

**NOTE:** In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing utility or plant application filed before June 8, 1995, or a continuing design application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents. 37 C.F.R. § 1.137(d)(2).

**NOTE:** In accordance with the Notice of November 5, 1990 (1121 O.G. 6), an application abandoned under 37 C.F.R. § 1.53(d) for failure to timely provide the appropriate filing fee, oath or declaration and/or surcharge may be revived under the procedure of 37 C.F.R. § 1.137(b).

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

**37 C.F.R. § 1.8(a)**

**37 C.F.R. § 1.10 \***

☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Addressee"

Mailing Label No. \_\_\_\_\_ (mandatory)

**TRANSMISSION**

☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

Date:

5/23/06

Signature

Chasidy Smith

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Petition for Revival of Unintentionally Abandoned Application [11-3]—page 1 of 4)

05/31/2006 HDESTA1 00000048 080300 10650186

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1. This application became abandoned on April 24, 2006

**NOTE:** Extensions under 37 C.F.R. § 1.136 are available only if asked for "prior to or with the response." Accordingly, if the question of abandonment arises when the provisions of § 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. Thus: An application which is abandoned for failure to respond within a set period with no extension fee having been paid, would not require the payment of extension fees as a condition for revival. M.P.E.P. § 711.03(c), 6th ed., rev. 2.

2. This application became abandoned because the failure to prosecute was an unintentional delay. The entire delay in filing the required reply from the due date until the filing of this petition was unintentional 37 C.F.R. § 1.137(b)(3).

3. Response or action required

- ☒ has been filed.  
☐ is attached.

(complete the following, as applicable)

**NOTE:** The PTO accepts the filing of a continuing application as a response under 37 C.F.R. 1.137. To facilitate processing in such a case, the petition to revive should specifically refer to the filing of a continuing application and also include an express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application. Notice of May 13, 1983, (1031 O.G. 11-12). See also M.P.E.P. § 711.03(c), 6th ed., rev. 2. "In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof." 37 C.F.R. § 1.137(b)(1).

**NOTE:** 37 C.F.R. 1.137(c):

(c) Reply. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

- ☐ In connection with the required reply which is required by this petition, please note that:
- ☐ the response in this case is the filing of a continuation application having an express abandonment of the instant application upon its revival conditioned on the granting of a filing date to the continuing application copending with this application.
  - ☐ the response is by the filing of a request for continued examination in compliance with § 1.114.
  - ☐ the required issue fee or any portion thereof is paid.
  - ☐ the required publication fee is paid.
  - ☐ Other

4. Fee (37 C.F.R. 1.17(m))

Application status is:

- ☐ Small business entity—fee \$750.00
  - ☐ A statement is attached.
  - ☐ A statement was filed.
- ☒ Other than small entity—fee \$1,500.00

5. Payment of fee

- ☐ Attached is a ☐ check ☐ money order in the amount of \$ \_\_\_\_\_
- ☐ Authorization is hereby made to charge the amount of
  - ☐ \$750.00. ☐ \$1,500.00.
  - ☒ to Deposit Account No. 08-0300
  - ☐ to Credit Card as shown on the attached credit information authorization form PTO-2038.

A duplicate of this petition is attached.

**WARNING:** Credit card information should not be included on this form as it may become public.

6. Showing:

*(complete the following, if applicable)*

- ☐ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).
- ☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).

**7. Terminal Disclaimer:**

**NOTE: 37 C.F.R. 1.137(d):**

*(d) Terminal disclaimer.*

*(1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:*

*(i) The period of abandonment of the application; or*

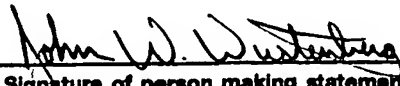
*(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.*

Since this application is:

- ☐ a design application  
☐ a utility application filed before June 8, 1995

a terminal disclaimer and the fee set forth in § 1.321 accompanies this petition.

Date: 23 MAY 06

  
Signature of person making statement  
that abandonment was due to an unintentional delay

John W. Wustenberg  
(type or print name of person making statement)

2600 S. 2ND  
Residence of person making statement

Duncan OK 73533

Reg. No.: 35,415

Tel. No.: ( 580 ) 251-3782

Customer No.: 29920

  
SIGNATURE OF PRACTITIONER

John W. Wustenberg  
(type or print name of practitioner)

PO BOX 1431  
P.O. Address

Duncan OK 73536-0440



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1430  
 Alexandria, Virginia 22313-1450  
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/650,186	08/28/2003	Lyle V. Lehman	2002-IP-009291U1

**CONFIRMATION NO. 6459**  
**ABANDONMENT/TERMINATION**  
**LETTER**

29920  
 JOHN W. WUSTENBERG  
 P.O. BOX 1431  
 DUNCAN, OK 73536

Date Mailed: 04/24/2006

**NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)**

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 12/05/2003.

- The reply received on 07/26/2004 was untimely.

If a complete reply to the notice was previously filed by applicant within the time period set forth in the notice, applicant may request for reconsideration of the holding of abandonment within 2 months from the mailing of this notice of abandonment by filing a petition to withdraw the holding of abandonment under 37 CFR 1.181(a). No petition fee is required. The petition must be accompanied by a true copy of the originally filed reply and the item (s) identified in one of the following:

1. A properly itemized date-stamped postcard receipt (see MPEP § 503);
2. If the originally filed reply included a certificate of mailing or transmission in compliance with 37 CFR 1.8(a), a copy of the certificate of mailing or transmission and a statement in compliance with 37 CFR 1.8(b) (see MPEP §§ 512); or
3. If the reply was filed via Express Mail, a submission satisfying the requirements of 37 CFR 1.10(e) including, for example, a copy of the Express Mail mailing label showing the "date-in" (see MPEP § 513).

Any petition to withdraw the holding of abandonment should be directed to OIPE.

If applicant did not previously file a complete reply within the time period set forth in the notice, applicant may file a petition to revive the application under 37 CFR 1.137.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d). See MPEP § 711.03(c) and Form PTO/SB/61.

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37

CFR 1.137(d). See MPEP § 711.03(c) and Form PTO/SB/64.

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (571) 272-3282.

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*A copy of this notice **MUST** be returned with the reply.*

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Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199, or 1-800-972-6382  
PART 2 - COPY TO BE RETURNED WITH RESPONSE